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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,496	04/15/2004	John C. Sullivan	35502US1	8554
116	7590	07/17/2007		
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER NGUYEN, KIEN T	
			ART UNIT 3711	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/825,496

Applicant(s)

SULLIVAN ET AL.

Examiner

Kien T. Nguyen

Art Unit

3711

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 10, 15-19, 22-25, 29, 31, 32, 40-43, 45, 52, 53 and 55-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 15-19, 22-25, 29, 31, 32, 40-43, 45, 52 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 53, 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 15, 18, 19, 56, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Dignard et al U.S. Patent 4,662,630.

Dignard et al disclosed a mounting assembly comprising a first mounting plate (33); a spring (53) having a first end portion secured to the first mounting plate such the spring is perpendicular with respect to the first mounting plate; an image (14) secured to the first mounting plate; wherein the spring facilitates a wobble movement of the mounting plate and image in a clockwise and counterclockwise manner; a second mounting plate (32) secured to the second end of the spring such that the spring is perpendicular with respect to the second mounting plate; a spring mount (fastener) employed to secure the spring to the first mounting plate.

Regarding claim 15, member (32) is considered a body; the image (14) coupled to the body via at least one spring (53) extending perpendicular between a vertical plane of the body and a vertical plane of the image, such that the image is able to move in a clockwise and counterclockwise manner when activated. A base (25) is for supporting the body, the base comprising a slot provided in a top portion of the base for receiving a bottom portion (31) of the body.

Claims 23, 24, 25, 29, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Core U.S. Patent 3,195,256.

Core disclosed a mounting display comprising a first mounting plate (20); a spring (66) having a first end portion secured to the first mounting plate such that the spring is perpendicular with respect to the plate; an image (not shown) secured to the first mounting plate; a second mounting plate (69) secured to a second end portion of the spring perpendicularly; the image is a photograph. Core can also be characterized as a body (43), at least one image (photograph) coupled to the body by a spring (66) extending perpendicular between a vertical plane of the body and a vertical plane of the image a base (48) for supporting the body and the base having a slot at (55) for supporting the body.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 52, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dignard et al.

Regarding claim 4, it would have been a matter of design choice to substitute the spring mount with any equivalent fastening means such as epoxy resin to perform the same function.

Regarding claim 52, it would have been a matter of design choice to provide the spring of Dignard et al with any desired compressed height to accommodate any specific user.

Regarding claim 56, it would have been a matter of design choice to construct the body with any desired material such as plastic, and/or metal to accommodate any specific environment.

Claims 5, 10, 16, 17, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dignard et al in view of Micco U.S. Patent 5,280,905.

It is noted that Dignard et al failed to teach the use of a photograph, and a microchip to produce a sound. However, Micco disclosed a tackling dummy having an image or photograph (14) attached to a body and a sound device for producing sound. Therefore, it would have obvious to one of ordinary skill in the art to modify the apparatus of Dignard et al with the teachings of Micco for the purpose of enhancing the exercising experience.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Core.

See the above explanation for claim 52 above.

***Allowable Subject Matter***

Claims 53 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kien T. Nguyen/  
Kien T. Nguyen, Primary Examiner  
Art Unit 3711

Ktn